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VIA MESSENGER AND FACSIMILE

Commission Chair Liane M. Randolph
Commissioner Philip Blair
Commissioner Sheridan Downey, III
Commissioner A. Eugene Huguenin, Jr.
Commissioner Ray Remy
California Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Pre Notice Discussion of Amendments to the Aggregation Regulations

Dear Chairman Randolph and Commissioners:

I write regarding agenda item number 19. I urge the Commission to reject any effort to further define the provisions of section 85311 through regulation. As staff correctly points out, section 85311 (enacted by Proposition 34) is copied nearly word for word from prior FPPC regulation 18215.1. This prior regulation was developed to implement the contribution limits of Proposition 73, and only after much Commission debate. As staff notes, the Commission ultimately based regulation 18215.1 upon longstanding FPPC Opinions defining affiliation for reporting purposes.

Why is it now necessary to develop a regulation interpreting a statute that was copied word for word from a prior FPPC regulation?

Staff seems to answer this question by first suggesting that past regulation has "depended on whether or not contribution limits are in effect." In effect staff is saying that because Proposition 34 has imposed contribution limits, the Commission needs to regulate again. But this ignores the very history of Proposition 34. It is true the Commission adopted regulations defining "affiliation" and "aggregation" when contribution limits were in effect. Regulation 18215.1 is the best example. It was adopted in the wake of Proposition 73 contribution limits. While the Commission abandoned regulation 18215.1 when Proposition 208 was adopted imposing broader aggregation rules, Proposition 34 repealed Proposition 208. In doing so Proposition 34 imposed its own affiliation and aggregation rules for contribution limits by using language the Commission employed when it adopted 18215.1 interpreting Proposition 73. In short, Proposition 34 told the Commission that it got it right when it adopted regulation 18215.1. This should have eliminated any need for further Commission regulatory action, not required it.

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Staff also seems to justify further regulation by suggesting that the regulated community desires "clear easy to follow rules." Yet the staff fails to explain why the current rules are not clear enough. A quick review of staff's proposed regulation suggests the real motive is to "expand" the definition of "direct and control" and not to provide any additional clarity. In fact, the language in the proposed regulation hardly meets a "clear easy to follow" standard. For example, staff has proposed the concept of "dominant influence" to determine if a person is directing and controlling the making of a contribution. Rather than clarifying "direct and control," such language makes the inquiry more subjective, and murkier. It will ultimately make legal compliance more difficult.

The bottom line is simple enough. The Commission got it right the first time when it adopted regulation 18215.1. Proposition 34 codified the Commission's regulation. Further regulation is unwarranted. Section 85311 is clear enough. It has not led to confusion in the regulated community.

I also note that the proposed regulation would extend definitions in section 85311 to local jurisdictions. However, doing so implicates concerns with respect to aggregation rules in Charter Cities which have already adopted such laws and which laws are not necessarily consistent with Section 85311. It seems the staff has not given adequate or due consideration to the home rule provisions of the State Constitution in this regard.

Very truly yours,

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